

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NINTENDO OF AMERICA, INC.,

Plaintiff,

v.

LE HOANG MINH, d/b/a WINMART,

Defendants.

NO.

COMPLAINT

JURY DEMAND

Plaintiff Nintendo of America Inc. brings this action against Defendant Le Hoang Minh, d/b/a Winmart for circumvention of a technological protection measure that controls access to a copyrighted work and trafficking in devices intended to circumvent technological protection measures. Plaintiff pleads as follows:

I. PARTIES

1. Nintendo of America Inc. is a Washington corporation headquartered in Redmond, Washington. Nintendo of America Inc. is a wholly owned subsidiary of Nintendo Co., Ltd., a Japanese company headquartered in Kyoto, Japan (collectively, “Nintendo”). Nintendo of America Inc. is responsible for the marketing, distribution, and sale of Nintendo’s products and the

1 enforcement of Nintendo's intellectual property rights, in the United States. Nintendo develops
2
3 and designs electronic video game consoles, games, and accessories.
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5 2. Defendant Le Hoang Minh, d/b/a Winmart offers to the public, sells, and otherwise
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7 traffics in a circumvention device known as the RCM Loader, the sole purpose of which is to hack
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9 or "jailbreak" Nintendo's video game consoles, circumventing Nintendo's copyright protection
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11 systems and allowing people to play pirated video games. Defendant's acts facilitate infringement
12
13 of Nintendo's copyrighted works on a massive national and international scale.
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15 II. NATURE OF THE ACTION

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17 3. This is a civil action seeking relief for unlawful trafficking in circumvention
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19 devices in violation of the Digital Millennium Copyright Act (DMCA), 17 U.S.C. § 1201 et seq.,
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21 and abuse of the DMCA's counter-notification system under 17 U.S.C. § 512(f).
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23 III. JURISDICTION AND VENUE

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25 4. This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331 &
26
27 1338(a) and 17 U.S.C. §§ 1201 & 1203.
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29 5. Defendant is subject to the personal jurisdiction of this Court pursuant to
30
31 Washington Revised Code § 4.28.185 and Fed. R. Civ. P. 4(k)(1) because Defendant transacts
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33 business in the State of Washington and in this District. Defendant has specifically marketed,
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35 offered to the public, and otherwise trafficked in the circumvention device in the United States and
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37 in this District. Defendant purposefully directs its activities into this District and to residents of
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39 this District, does business with residents of this District, and avails itself of the privilege of
40
41 conducting business in this District. Nintendo's claims arise out of and relate to Defendant's
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43 activities in this District.
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6. Defendant is also subject to the personal jurisdiction of this Court pursuant to 17 U.S.C. §512(g)(3)(D), which contains explicit consent to jurisdiction upon submission of a DMCA counter-notification. Specifically, Defendant's circumvention devices are available for purchase on the Amazon.com e-commerce platform ("Amazon"). Amazon.com, Inc., which owns and operates Amazon, is headquartered in this District. Nintendo submitted a DMCA notification to Amazon relating to Defendant's infringing conduct. By submitting a DMCA counter-notification to Amazon, Defendant has explicitly consented to the personal jurisdiction of any United States federal district court in which Amazon and its affiliates may be found. *See* 17 U.S.C. § 512(g)(3)(D). **Exhibit A** contains a copy of Defendant's DMCA counter-notification submitted to Amazon.

7. According to the DMCA counter-notification submitted by Defendant to Amazon, Defendant resides in Vietnam. On information and belief, Defendant is not domiciled or located in any state in the United States. Defendant is also not incorporated in any state in the United States.

IV. FACTS

8. Nintendo is a company and brand famous throughout the United States and the world, known by consumers of all ages for its video games, video game consoles, and video game characters.

9. For decades, Nintendo has been a leading developer and producer of video games and video game consoles. In 1983, Nintendo released the Nintendo Entertainment System, or "NES," in the United States, which introduced millions of consumers to now-classic games like *Super Mario Bros.*, *The Legend of Zelda*, and *Donkey Kong*. The NES console also introduced millions of consumers to some of Nintendo's original and long-lasting characters, including Mario

1 and Luigi, Yoshi, Link, Donkey Kong, and Samus Aran. Over the ensuing decades, Nintendo
 2 followed up the popularity of the NES console with the release of such groundbreaking home video
 3 consoles as Super Nintendo Entertainment System, Nintendo 64, Nintendo GameCube, Wii, Wii
 4 U, and the Nintendo Switch. Since 1983, Nintendo has sold more than 4.7 billion video games and
 5 more than 750 million hardware units globally.
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 7
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 9

10
 11 10. In March 2017, Nintendo released a new console called the Nintendo Switch, a
 12 home video console that can also be played “on the go” in handheld mode. Nintendo develops
 13 and distributes the Nintendo Switch video game console, as well as the proprietary and copyrighted
 14 software that serves as the Nintendo Switch’s operating system.
 15
 16
 17
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19 11. The Nintendo Switch is sold in stores around the world and has become one of the
 20 best-selling video game consoles of all time, selling over 68 million units as of September 30, 2020
 21 worldwide.
 22
 23
 24

25 12. Nintendo also makes award-winning video game software that consumers can
 26 exclusively play on the Nintendo Switch. The top five Nintendo-developed games released for the
 27 Nintendo Switch alone have sold more than 95 million copies as of March 2020, and individually
 28 each game title has sold over 17 million copies. These games, and all other games produced by
 29 Nintendo, are subject to valid, registered copyrights either owned by Nintendo or exclusively
 30 licensed by Nintendo.
 31
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 33
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37 **Anti-Piracy Technological Protection Measures in the Nintendo Switch**

38
 39 13. The popularity of Nintendo’s video games and video game consoles has made
 40 Nintendo the target of intellectual property pirates who misappropriate and unfairly benefit from
 41 Nintendo’s innovation and investment. These pirates make unauthorized copies of Nintendo’s
 42
 43
 44
 45

1 video games or create and sell devices used to enable others to play pirated copies of Nintendo's
2
3 video games on a Nintendo console.
4

5 14. Piracy of video game software has become a serious, worsening international
6
7 problem. Nintendo has taken affirmative steps around the world and expended significant
8
9 resources to halt and prevent the illegal copying, marketing, sale, and distribution of Nintendo's
10
11 video games (or games made by licensed developers) designed to be played on Nintendo's video
12
13 game consoles, and to halt the illegal trafficking in devices that allow users to play unauthorized
14
15 copies of games on Nintendo's video game consoles.
16

17 15. To protect its intellectual property against video game piracy, and to ensure that
18
19 only authorized and licensed Nintendo Switch games can be played on the Nintendo Switch
20
21 console, Nintendo designed the Nintendo Switch with sophisticated security features. These
22
23 features are designed to prevent unauthorized access to the console and games, the circumventing
24
25 or impairing of Nintendo's operating system, and the unauthorized copying, playing, and sharing
26
27 of games (the "technological protection measures," or "TPMs"). The technological protection
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29 measures also prevent Nintendo Switch users from playing pirated video games.
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31 16. Each Nintendo Switch console contains an encrypted identifier, or "signature," that
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33 is checked when the Nintendo Switch console powers on. The operating system also contains
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35 technological protection measures designed to ensure that the operating system is authorized. The
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37 Nintendo Switch console will only start up normally if the technological protection measures
38
39 confirm that the operating system is authentic, i.e., authorized by Nintendo.
40

41 17. The Nintendo Switch also contains technological protection measures for each
42
43 *game* played on the Nintendo Switch (the "game TPMs"). The game TPMs use encryption and
44
45 signature similar to that of the Nintendo Switch's console operating system. The Nintendo Switch

1 console allows users to either purchase physical cartridges containing game software or to
2
3 download digital games from Nintendo's online store while using the Nintendo Switch. Both game
4
5 formats are protected by encryption.
6

7 18. The game data, whether stored on the Nintendo Switch console's built-in flash
8
9 memory or on a removable flash memory card that users can insert into the console, is also
10
11 encrypted with a key.
12

13 19. Nintendo owns or exclusively controls numerous copyrights in software and games
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15 that are protected from unlawful access and copying by the above-described technological
16
17 protection measures.
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19 20. In their ordinary course of operation, the TPMs require Nintendo's authorization to
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21 gain access to Nintendo's copyrighted works, thus allowing Nintendo to control access to and
22
23 copying of Nintendo's copyrighted works.
24

25 **Defendant's Circumvention Device Enables Playability of Pirated Games**

26 21. Defendant sells a hardware device called the "RCM Loader," the sole purpose of
27
28 which is to hack or "jailbreak" the Nintendo Switch video game console to allow people to play
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30 pirated video games and other software. Nintendo has discovered that Defendant offers and sells
31
32 the RCM Loader through Amazon.com. **Exhibit B** contains a screenshot of the RCM Loader
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34 product page on Amazon.
35

36 22. The RCM Loader is made to be used with software ("payload injection files") that
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38 users then inject into their Nintendo Switch console to hack the device. Once the RCM Loader is
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40 physically inserted into the Nintendo Switch, the accompanying payload injection files are injected
41
42 into the Nintendo Switch.
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44
45

23. Defendant's RCM Loader is designed to facilitate the use of payload injection files and unauthorized custom firmware (the "unauthorized CFW") including, among others, a product called SX OS. The unauthorized CFW is then used to circumvent the technological protection measures that Nintendo implemented to prevent pirated video games and other unauthorized third-party software from being played on the Nintendo Switch. Once this circumvention has occurred, the unauthorized CFW modifies the authorized Nintendo Switch operating system, thereby allowing users to obtain and play virtually any pirated game made for the Nintendo Switch. All of this happens without authorization or compensation to Nintendo or to any authorized game publishers.

24. What is more, Defendant's conduct facilitates the unauthorized copying of Nintendo's video game software. Users who already own a lawful copy of a Nintendo Switch game can use the same unauthorized CFW to unlawfully copy the game software and share copies of it with others who own Nintendo Switch consoles running the unauthorized CFW.

25. Nintendo has permanently enjoined multiple resellers of license keys to the SX OS software from selling, providing, or otherwise trafficking in any circumvention devices or software that target Nintendo, Nintendo's consoles, Nintendo's technological protection measures, and/or Nintendo's copyrighted works. *See Nintendo of America Inc. v. Tom Dilts Jr. and UberChips, LLC*, Case No. 3:20-CV-01076-JJH, Dkt. #16 (N.D. Ohio, October 2, 2020); *Nintendo of America Inc. v. ANXCHIP.COM, et al.*, Case No. 2:20-CV-00738-TSZ, Dkt #28 (W.D. WA, October 6, 2020). However, many copies of the SX OS software and similar unauthorized CFW remain in the marketplace because of entities like Defendant who continue to traffic in circumvention devices like the RCM Loader, which are designed to be used for the SX OS and other unauthorized CFW.

1 26. On information and belief, the RCM Loader circumvention device interferes with
2
3 the normal operation of the Nintendo Switch console to circumvent the console's sequence of
4
5 security checks and force it to run the unauthorized CFW. Using that unauthorized CFW, the
6
7 circumvention device modifies the authentic operating system to, among other things, retrieve the
8
9 authentic encryption keys necessary to access the encrypted data on the Nintendo Switch.
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11 27. On information and belief, the Nintendo Switch console then loads and runs the
12
13 unauthorized CFW, modifying the authorized Nintendo Switch operating system. The
14
15 unauthorized CFW at that point has full control of the console, allowing for the circumvention of
16
17 Nintendo's game TPMs. This process allows hackers to copy, play, and further distribute
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19 unauthorized copies of Nintendo's and its licensees' copyrighted video games, all without
20
21 detection by Nintendo.
22

23 28. Nintendo has not authorized users to download or play any games on the Nintendo
24
25 Switch that were not purchased lawfully.
26

27 29. Nintendo has never authorized Defendant nor any of Defendant's customers to use
28
29 the RCM Loader to circumvent the Nintendo Switch's technological protection measures to gain
30
31 access to Nintendo's copyrighted works or to copy those works in this unauthorized manner.
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33 30. Defendant has sold and shipped its circumvention device directly to customers
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35 through the Amazon e-commerce platform. Trafficking in the circumvention device is a direct
36
37 violation of Nintendo's rights under 17 U.S.C. §§ 1201 & 1203, regardless of whether a user ever
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39 actually uses the RCM Loader on the Nintendo Switch.
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41 31. After Defendant's circumvention device was brought to Nintendo's attention,
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43 Nintendo filed a DMCA "takedown" notice with Amazon on October 21, 2020, under 17 U.S.C.
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45

§ 512(c) to remove the listing of Defendant’s RCM Loader product. This resulted in the temporary removal of Defendant’s product listing on Amazon.

32. In response to Nintendo’s DMCA takedown notice, Defendant submitted a DMCA “counter-notification” to Amazon under 17 U.S.C. § 512(g)(3) on November 4, 2020. Pursuant to § 512(g)(2)(B)–(C), Amazon had to inform Nintendo of the counter-notification. Section 512(g)(2)(B) and (C) also requires Amazon to replace the removed material or cease disabling access to Defendant’s listing for the RCM Loader within ten (10) to fourteen (14) business days from the date of the counter-notification, unless Nintendo provides Amazon notice that it has filed an action in Court to restrain the Defendant from the infringing activity.

33. Defendant’s unlawful conduct is causing and will continue to cause Nintendo significant financial harm. Nintendo’s copyrighted games and game software are integral to the Nintendo Switch console’s popularity. Nintendo’s business necessarily relies on the authorized and licensed sale of authentic copies of the video games and on trust it has built over decades with third-party game developers. Game developers operate under the guarantee that their games will not be illegally distributed or used by persons who have not lawfully purchased their games. Nintendo has invested and continues to invest in its technological protection measures to secure its consoles and copyrighted games, and to ensure that users cannot use its consoles to play pirated games.

34. Defendant’s unlawful conduct falls squarely within the DMCA anti-trafficking and anti-circumvention provisions. The RCM Loader enables the deactivation of Nintendo’s technological protection measures—which Nintendo developed and put in place to protect its copyrighted works from unlawful access and copying—thereby causing widespread piracy of Nintendo’s copyrighted video games.

35. Defendant's importation, marketing, sale, offering to the public, and trafficking in the RCM Loader circumvention device has directly injured and damaged Nintendo. Defendant's conduct infringes and threatens irreparable injury to Nintendo's intellectual property rights and violates the anti-trafficking provisions of the DMCA entitling Nintendo to the relief sought herein.

36. Without the intervention of this Court, Defendant will continue to engage in illegal conduct in this District and the United States undeterred, causing continued irreparable harm to Nintendo.

V. COUNT ONE

(Trafficking in Devices in Violation 17 U.S.C. § 1201(a)(2))

37. Nintendo repeats and reasserts every allegation contained in paragraphs 1–36 as if fully set forth here.

38. Section 1201(a)(2) of the DMCA, 17 U.S.C. § 1201(a)(2), prohibits the trafficking of devices that are primarily designed to circumvent technological protections that effectively control access to copyrighted works.

39. The Nintendo Switch's technological protection measures effectively control access to works protected by the Copyright Act, including the proprietary and copyrighted operating system of the Nintendo Switch as well as Nintendo's video games playable on the Switch.

40. The Nintendo Switch's technological protection measures require the application of information, or a process or a treatment, with Nintendo's authority, to gain access to the Nintendo Switch console and any copyrighted games playable on the Switch.

1 41. Defendant manufactures, imports, offers to the public, provides, and otherwise
2
3 traffics in a circumvention device and software that circumvents the technological measures on the
4
5 Nintendo Switch—specifically, the RCM Loader.
6

7 42. The RCM Loader is primarily designed and produced for the purpose of
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9 circumventing the Nintendo Switch’s technological protection measures. Defendant sells the RCM
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11 Loader and its accompanying software for the purpose of circumventing Nintendo’s technological
12
13 protection measures.
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15 43. The RCM Loader and accompanying software have no commercially significant
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17 purposes or uses other than to circumvent Nintendo’s technological protection measures. On
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19 information and belief, the *only* purpose of Defendant’s circumvention device is to circumvent
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21 Nintendo’s technological protection measures.
22

23 44. On information and belief, Defendant knows that its RCM Loader is intended to
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25 circumvent Nintendo’s technological protection measures that control access to Nintendo’s
26
27 copyrighted works.
28

29 45. Thus, Defendant’s conduct violates 17 U.S.C. § 1201(a)(2)(A), (B), and (C).
30

31 46. Each such offering to the public, provision, or other act of trafficking constitutes a
32
33 violation of 17 U.S.C. § 1201. Nintendo is entitled to damages from each violation under 17 U.S.C.
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35 § 1203(c)(1), and injunctive relief under § 1203(b)(1).
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37 47. Defendant’s actions are willful, intentional, purposeful, and in disregard of and
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39 indifferent to the rights of Nintendo.
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41 48. As a direct and proximate result of Defendant’s acts, Nintendo is entitled to the
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43 maximum statutory damages, pursuant to 17 U.S.C. § 1203(c)(3)(A), in the amount of \$2,500, or
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45 such other amounts that may be proper under 17 U.S.C. § 1203(c), for each act in violation of 17

U.S.C. § 1201. In the alternative, pursuant to 17 U.S.C. § 1203(c)(2), Nintendo is entitled to its actual damages, as well as to Defendant's profits from these violations, in amounts to be shown at trial.

49. Nintendo is entitled to its costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 1203(b).

50. Defendant's conduct is causing and, unless enjoined by this Court, will continue to cause Nintendo great and irreparable injury for which there is no adequate remedy at law. Pursuant to 17 U.S.C. § 1203(b)(1), Nintendo is entitled to permanent injunctive relief prohibiting Defendant from engaging in future acts of offering to the public, providing, or otherwise trafficking in the circumvention devices and accompanying software.

VI. COUNT TWO

(Trafficking in Devices in Violation of 17 U.S.C. § 1201(b)(1))

51. Nintendo repeats and realleges every allegation contained in paragraphs 1 through 50 as if fully set forth here.

52. Section 1201(b) of the DMCA, 17 U.S.C. § 1201(b), prohibits the trafficking of devices that are primarily designed to circumvent technological protection measures that prevent the unlawful copying of copyrighted works.

53. The Nintendo Switch's technological measures effectively protect Nintendo's and third-party copyrighted works. These copyrighted works include the Nintendo Switch operating system and Nintendo's video games playable on the Nintendo Switch.

54. The Nintendo Switch's technological protection measures, in the ordinary course of their operation, prevent, restrict, or otherwise limit a Nintendo Switch user from copying

1 Nintendo's copyrighted works. The technological protection measures also control whether a user
2
3 can play unauthorized copies of Nintendo's copyrighted works on the Nintendo Switch.
4

5 55. Through Defendant's RCM Loader circumvention device, which is intended to be
6
7 used to hack the Nintendo Switch's authentic operating system, Defendant offers to the public,
8
9 provides, and otherwise traffics in devices designed to circumvent the technological protection
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11 measures on the Nintendo Switch.
12

13 56. The RCM Loader is primarily designed and produced for the purpose of
14
15 circumventing the Nintendo Switch's technological protection measures. Defendant sells the RCM
16
17 Loader and its accompanying software for the purpose of circumventing Nintendo's technological
18
19 protection measures.
20

21 57. Defendant's RCM Loader and its accompanying software have no commercially
22
23 significant purposes or uses other than to circumvent Nintendo's technological protection
24
25 measures. On information and belief, the *only* purpose of Defendant's circumvention device is to
26
27 circumvent Nintendo's technological protection measures.
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29 58. On information and belief, Defendant knows that its RCM Loader is intended to
30
31 circumvent Nintendo's technological protection measures that control access to Nintendo's
32
33 copyrighted works.
34

35 59. Thus, Defendant's conduct violates 17 U.S.C. § 1201(b)(1)(A), (B), and (C).
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37 60. Defendant violates 17 U.S.C. § 1201 each time Defendant offers, provides, or
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39 traffics the circumvention device and accompanying software to the public. Nintendo is entitled to
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41 damages for each instance of the foregoing conduct under 17 U.S.C. § 1203(c) and to injunctive
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43 relief under § 1203(b)(1).
44
45

61. Defendant's acts are willful, intentional, purposeful, and in disregard of and indifferent to the rights of Nintendo.

62. As a direct and proximate result of Defendant's violation of 17 U.S.C. § 1201, Nintendo is entitled to the maximum statutory damages, pursuant to 17 U.S.C. § 1203(c)(3)(A), in the amount of \$2,500 with respect to each act of offering to the public, provision, or otherwise trafficking in the circumvention device and software, or such other amounts as may be proper under 17 U.S.C. § 1201(c). In the alternative, pursuant to 17 U.S.C. § 1203(c)(2), Nintendo is entitled to its actual damages, as well as to Defendant's profits from these violations, in amounts to be shown at trial.

63. Nintendo is entitled to its costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 1203(b).

64. Defendant's conduct is causing and, unless enjoined by this Court, will continue to cause Nintendo great and irreparable injury for which there is no adequate remedy at law. Pursuant to 17 U.S.C. § 1203(b)(1), Nintendo is entitled to permanent injunctive relief prohibiting Defendant from engaging in further acts of offering to the public, providing, or otherwise trafficking in circumvention devices and software.

VII. COUNT THREE

(Abuse of DMCA Counter-Notification Under 17 U.S.C. § 512(f))

65. Nintendo repeats and realleges every allegation in paragraphs 1–64 above as if fully set forth here.

66. After Nintendo initiated a DMCA takedown to prevent Defendant from trafficking in the circumvention device, Defendant filed a counter-notification with Amazon.

67. Defendant abused the DMCA counter-notification system and misrepresented material facts when it submitted the counter-notification to Amazon. Defendant is well aware that it traffics in a circumvention device intended to circumvent Nintendo's technological protection measures. By submitting a counter-notification, however, Defendant asks Amazon to rely on Defendant's misrepresentations and to replace and restore access to Defendant's infringing product listing.

68. Defendant's conduct thus violates 17 U.S.C. § 512(f).

69. Defendant has realized or is likely to soon realize unjust profits and unjust enrichment as a proximate result of its abuse of the DMCA counter-notification system in an amount yet to be determined.

70. As a direct and proximate result of Defendant's abuse of the DMCA system, Nintendo has suffered and will continue to suffer actual damages. Nintendo is entitled to actual damages and any gains, profits, and advantages obtained by Defendant resulting from Defendant's abuse of the DMCA counter-notification system.

71. Nintendo is further entitled to recover its attorneys' fees and full costs per 17 U.S.C. § 512(f).

VIII. JURY DEMAND

Nintendo demands that this matter be heard before a jury on all issues so triable.

IX. PRAYER FOR RELIEF

Plaintiff Nintendo of America respectfully requests that this Court enter judgment against Defendant Le Hoang Minh, d/b/a Winmart, for the following relief:

A. declare that Defendant's actions constitute violations of 17 U.S.C. § 1201 and 17 U.S.C. § 512(f).

1 B. award equitable relief under Titles 17 and 28, and this Court's inherent equitable
 2
 3 powers, as is necessary to prevent or restrain Defendant's further violations, including: (1) a
 4
 5 permanent injunction prohibiting Defendant—including Defendant's officers, servants,
 6
 7 employees, attorneys, and others in active concert or participation with any of these parties—from
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 9 offering to the public, marketing, selling, providing, or otherwise trafficking in the RCM Loader
 10
 11 circumvention device, including all accompanying software, and any other circumvention devices
 12
 13 or software that target Nintendo, Nintendo's consoles, or copyrighted works; and (2) prohibiting
 14
 15 Defendant from engaging in any other violation of the DMCA or Copyright Act, or any other
 16
 17 federal or state law, that results in harm to Nintendo.

18
 19 C. order under 17 U.S.C. § 1203 for the seizure, impoundment, and destruction of all
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 21 circumvention devices, all copies of software accompanying the RCM Loader, and all other
 22
 23 electronic material or physical devices within Defendant's custody, possession, or control—
 24
 25 including any hard drives or other electronic storage devices containing such material—that violate
 26
 27 Nintendo's rights under the DMCA or infringe upon copyrights owned or exclusively licensed by
 28
 29 Nintendo.

30
 31 D. order Defendant to file a written report with the Court, with service to Nintendo,
 32
 33 setting forth in detail the manner in which Defendant has complied with all of Defendant's
 34
 35 requirements under this order within thirty (30) days after service of judgment with notice of entry.
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37 E. award statutory damages under 17 U.S.C. § 1203(c) in the amount of \$2,500 per
 38
 39 violation of 17 U.S.C. § 1201, arising from Defendant's willful violations of the anti-trafficking
 40
 41 provisions of the DMCA. In the alternative, pursuant to 17 U.S.C. § 1203(c)(2), award Nintendo
 42
 43 its actual damages as well as Defendant's profits from Defendant's violations of 17 U.S.C. § 1201,
 44
 45 in amounts to be proven at trial.

F. order an accounting, the imposition of a constructive trust, and restitution of Defendant's unlawful proceeds from its violations of 17 U.S.C. § 1201, in an amount to be proven at trial.

G. award Nintendo's costs and reasonable attorney's fees under 17 U.S.C. § 1203(b).

H. award prejudgment and post-judgment interest.

I. award any other relief as the Court may deem just and proper.

DATED this 18th day of November, 2020.

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EXHIBIT A

From: counter-notice@amazon.com
Sent: Wednesday, November 4, 2020 9:06 AM
To: IP Enforcement
Cc: minhkayak43@gmail.com
Subject: RE:[CASE 7521067811] Re: Notice: Policy Warning

Hello,

We have received the attached counter notice to your report of posting, hosting and/or distributing unlicensed copyright protected material on our network. We will allow this material to be accessible, unless you provide us with notice that a lawsuit has been filed against the counter-noticing party within 10 business days. Please ensure a copy is sent to counter-notice@amazon.com to help ensure efficient processing.

Regards,

Amazon.com

Dear Amazon.com Legal Department

This letter is a formal response to a claim of copyright infringement against ASIN: B07YWCZBQR received on Oct 21, 2020, that were uploaded and published on Amazon.com.

- Infringement type: Copyright

- Complaint ID: 6899975771

I believe the claims of copyright infringement made by A Hagen:
ipenforcement@noa.nintendo.com are inaccurate and should be rejected
because:

The material in question is not copyrighted, or the copyright has expired in the United States of America. It is therefore in the public domain and may be reproduced by anyone.

The complainant has provided no copyright registration information or other tangible evidence that the material in question is in fact copyrighted, and I have a good faith belief that it is not. The allegation of copyright violation is therefore in dispute, and at present unsupported.

The complainant does not hold the copyright to the material in question, is not the designated representative of the copyright holder, and therefore lacks standing to assert that my use of the material is a violation of any of the owner's rights.

My use of the material is legally protected because it falls within the "fair use" provision of the copyright regulations, as defined in 17 USC 107. If the complainant disagrees that this is fair use, they must work directly with me, through legally viable channels, to resolve the dispute.

Amazon.com and its employees under no obligation to settle this dispute, or to take any action to restrict my speech at the behest of this complainant.

The complaint does not follow the prescribed form for notification of an alleged copyright violation as set forth in the Digital Millennium Copyright Act, 17 USC 512©(3). Specifically, the complainant has failed to:

- Provide a complaint in written form. [17 USC 512©(3)(A)] • Include a physical or electronic signature of the complainant. [17 USC512©(3)(A)(i)] • Identify the specific copyrighted work claimed to be infringed, or, if multiple copyrighted works are covered by a single complaint, provide a representative list of such works. [17 USC 512©(3)(A)(ii)]
- Provide the URLs for the specific files on my web site that are alleged to be infringing. [17 USC 512©(3)(A)(iii)] • Provide sufficient information to identify the complainant, including full name, mailing address, telephone number, and email address. [17 USC 512©(3)(A)(iv)] • Include a written statement that the complainant has a good faith belief that use of the disputed material is not authorized by the copyright owner, its agent, or the law. [17 USC 512©(3)(A)(v)] • Include a written statement that the information in the notification is accurate, and under penalty of perjury, that the complainant is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. [17 USC 512©(3)(A)(vi)]

This communication to you is a DMCA counter notification letter as defined in 17 USC 512(g)(3):

I declare, under penalty of perjury, that I have a good faith belief that the complaint of copyright violation is based on mistaken information, misidentification of the material in question, or deliberate misreading of the law.

I ask that Amazon.com, upon receipt of this counter-notification, restore the material in dispute, unless the complainant files suit against me within ten (10) days, pursuant to 17 USC 512(g)(2)(B).

My name, address, and telephone number are:

Le Hoang Minh
190, Da Nang, Thanh Khe, Vietnam - 550000
+84983811511

I hereby consent to the jurisdiction of any United States federal district court in which Amazon.com and its affiliates may be found.

I agree to accept service of process from the complainant.

Best regards,
Le Hoang Minh

Copyright/Trademark Agent
Amazon.com

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Bluetooth Payloads Injector Wireless Bluetooth Audio USB Type-c Transmitter Support for Bluetooth Headset or Speaker, Support GameSir VX, Portable Bluetooth Audio Adapter

Brand: WINMART

★★★★☆ 150 ratings | 23 answered questions

Currently unavailable.

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- Support system-wide version, region-wide FOR SWITCH Support for native payload. bin injection files
- Built-in lithium batteries, one charge to support thousands of injections
- Built-in Atmosphere, ReiNX, SXOS injection files, one-click switching
- Update management is convenient. Connecting computer automatically identifies as U disk, copy and paste can be updated.
- Strong compatibility, support Windows, OS, Linux, Android and other systems

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Product description

Features:

Support system-wide version, region-wide FOR SWITCH

Support for native payload. bin injection files

Built-in lithium batteries, one charge to support thousands of injections

Built-in Atmosphere, ReiNX, SXOS injection files, one-click switching

Update management is convenient. Connecting computer automatically identifies as U disk, copy and paste can be updated.

Strong compatibility, support Windows, OS, Linux, Android and other systems

Technical specifications:

Compatibility:

Compatible with Windows/OS/Linux/Android and other systems

Battery: built-in 45mAh lithium battery

One thousand payloads per hour of charging

Full standby time for three months

Interface and peripheral: Micro-USB master port

Type-C Head

Colorful LED lamp

Function key

Reset hole

Usage method:

Copy the SD card file to the microSD root directory FOR SWITCH.

MicroSD cards recommend using exFAT format to support files larger than 4G.

Insert RCMloader into FOR SWITCH host for charging.

FOR SWITCH starts, RCMloader inserts into the host, full of electricity will turn on the white light, press the FOR SWITCH power button for 7 seconds, and choose to shut down.

Insert RCMloader and RCMclip into FOR SWITCH host.

The charged RCM loader is inserted into the Type-C port, and the RCM lip is inserted into the bottom of the right handle groove.

Hold down the volume + key FOR SWITCH, then press the power key to enter the homemade system.

After entering the self-made system, the RCMloader injector and RCMclip short-circuit rod can be pulled out.

Packing contents:

1X RCM loader ONE injector

1X RCMclip Short Circuit Bar

1X Micro USB cable


Product information

Package Dimensions	2.36 x 1.65 x 0.71 inches
Item Weight	0.634 ounces
Manufacturer	Kitchen PUB
ASIN	B07YWCZBQR
Customer Reviews	★★★★☆ 150 ratings 4.5 out of 5 stars
Best Sellers Rank	#10,286 in MP3 & MP4 Player Accessories
Date First Available	October 8, 2019

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- Question:** will this have SX os license or do i need to purchase that as well?
- Answer:** you have to purchase a license, this just has the payload to boot it up
By Steven Stephenson on August 3, 2020
- Question:** Can it connect to the tv?
- Answer:** No. It's meant for your NINTENDO switch
By tee h.... on March 20, 2020
- Question:** Does this come with everything or no
- Answer:** yes, my package full part on photo, 1X RCM loader ONE injector, 1X RCMclip Short Circuit Bar, 1X Micro USB cable
By WINMART [SELLER](#) on January 22, 2020
- Question:** can someone tell me how this works and what are the risks of getting ban on nintendo switch ?
- Answer:** This has the payload to launch custom firmware on your switch. There is a whole reddit on how the custom firmware works and guide on how to do it. You can get banned, i have a banned switch so proceed with caution
By Steven Stephenson on August 3, 2020

See more answered questions (19)

Customer reviews



By feature

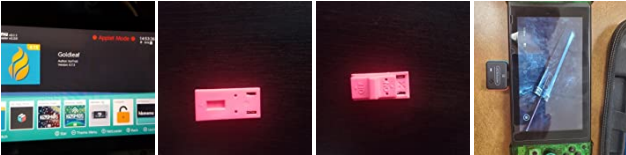


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Top reviews ▼

Top reviews from the United States

Ryan Trade

★★★★★ Works perfectly - now I have emulators galore on my Switch!
Reviewed in the United States on November 20, 2019
Verified Purchase

Not sure what the other reviewer was talking about, but mine was perfect. Jig worked even after I messed with my Switch with the "paper clip" method (which I actually got to work, but it's impossible to use multiple times so the jig is basically required).

Injector works everytime, I even dropped mine a few times and still working normally. The included shorty micro usb cord is a nice touch, so far so good! I now have CFW on my Switch and dozens of games and emulators with thousands of snes, genesis, 3do, tg16 and multiple other game systems onboard :) I'm a happy camper!

10 people found this helpful

Helpful | Comment | Report abuse

Nick

★★★★★ Bluetooth for the Switch!
Reviewed in the United States on April 9, 2020
Verified Purchase

Ignore the title, Let's be real here. You want this thing to gen pokemon for sword and shield. Me too that's the reason I purchase this PAYLOAD injector, do not buy this to get Bluetooth on your switch

Before purchasing make sure your Switch can be hacked by checking the serial number online, most likely your switch will not be able to get CFM on it if you bought after 2017.

If your switch is Hackable make sure you follow a step by step youtube tutorial and check for updates on youtube as with each Nintendo Switch firmware update certain things may be patched.

Just be careful and be smart with this item, it can be a great tool but tools can cause accidents if not used properly.

5 people found this helpful

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mike greene

★★★★★ Very useful
Reviewed in the United States on December 6, 2019

Verified Purchase

Early Reviewer Rewards (What's this?)

Works exactly as seen in the youtube videos.. u can shuffle thru the different payloads to find the 1 u need for your specific exploit.. very useful over using a paperclip and hooking your switch to a pc.. 5 star

5 people found this helpful

Helpful

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Robert

★★★★★ **PEBKAC**

Reviewed in the United States on May 13, 2020

Verified Purchase

I thought it was broken when I first got it, because the light kept flashing red and my switch would not boot into CFW. I was about to return it thinking it was defective when I noticed the website on the box so I went there and read their handy instructions and it works perfectly.

3 people found this helpful

Helpful

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Alfredo

★★★★★ **No issues this time**

Reviewed in the United States on November 16, 2019

Verified Purchase

The jig pin is out of place into the rest of the plastic and is unusable. Disappointing.

Edit: Replacement came in and the jig is functional this time around. The rest of the items work just fine.

Helpful

Comment

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5 people found this helpful

Helpful

Comment

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Casey N.

★★★★★ **Perfect for Payload Injection! Switched from SX Pro to this Dongle.**

Reviewed in the United States on July 20, 2020

Verified Purchase

Bought this after the capacitors in my SX Pro dongle failed. Obviously this is not a Bluetooth audio adapter. Don't buy it expecting that feature. But very nice Payload injector. Came with several payloads installed. Easy to update/use, charges quickly and works well. Sturdy design. Love that the single itself has a fitted slot to hold the jig when not being used, and that it came with a little case.

One person found this helpful

Helpful

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Ricardo

★★★★★ **This Injector works**

Reviewed in the United States on April 7, 2020

Verified Purchase

Pro:

- Easy to add or update payloads.
- Easy to update firmware.
- Easy to select payload to be injected.
- Easy to recharge

Cons:

- Battery life is short, does not inject even 100 payloads per charge.

3 people found this helpful

Helpful

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Timothy Pitcher

★★★★☆ **A very handy payload loader**

Reviewed in the United States on May 9, 2020

Verified Purchase

I acquired this item over a month ago, and boy was I impressed. The RCM Loader is a very handy accessory for loading payload files, and can save people the trouble of having to connect their Nintendo Switch to a PC computer. The only downside with the accessory is that it can only be used on older Nintendo Switch models, but as long as you have the right model, you should be all good.

For those who wish to run mods on their Nintendo Switch games, this is an accessory that I'd recommend buying.

Helpful

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https://www.amazon.com/dp/B07YWCZBQR

4/5



Upgrade Bluetooth
Payloads Injector

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